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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,908	01/16/2004	Felix Capanni	60,500-114	7057

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HOWARD & HOWARD ATTORNEYS, P.C.
THE PINEHURST OFFICE CENTER, SUITE #101
39400 WOODWARD AVENUE
BLOOMFIELD HILLS, MI 48304-5151

EXAMINER

GEHMAN, BRYON P

ART UNIT	PAPER NUMBER
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3728

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/758,908

Applicant(s)

CAPANNI ET AL.

Examiner

Bryon P. Gehman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7,10,12-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,12-15 and 17-20 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 22, 2006 has been entered.

2. The replacement drawing of Figure 3a was received on November 22, 2006. This drawing is approved.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2, 4-7, 12-15 (all claimed alternative dependencies) and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Happonen et al. (7007,798) in view of Sundstrom (6,974,030). Happonen et al. discloses a system for keeping ready bone screws comprising a device (1) receiving surgical fixation devices for securing living tissue, which would encompass bone tissue screws, the device having a surface (top of 4) and plate (4) with a plurality of orifices (2) for inserting the bone screws, the device allowing inserted bone screws to be kept countersunk in relation to

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the surface (see Figure 1b), wherein each orifice includes a first shoulder portion (supporting the side of head 6 as shown, or above that point) having a first diameter and a second shoulder portion (below the supported head 6 or supporting the side of head 6) having a second diameter, wherein the first and second diameters are not equal, and a removal instrument (13) for removing a bone screw from the device, the removal instrument dimensioned so that it is insertable into one of the orifices to remove a bone screw (see Figure 1b), and the device able to receive bone screws of different sizes and shapes (see column 2, lines 62-67 and column 3, lines 34-37) wherein the heads of different sized bone screws are operable to rest upon either one of the first or second shoulder portions (those larger than the shown screw 5 would rest on the upper first shoulder portion, those smaller than the shown screw 5 would rest on the lower second shoulder portion, the orifices aligned in a row, wherein the surface has a thickness wherein the ration of area to thickness is chosen such that the surface has no or only slightly springing properties (disclosed in column 2, lines 54-67 are materials of the keeping-ready device would be high density polypropylene and metal, both providing relatively no or only slightly springing properties. Sundstrom discloses a screw-holding device (1) having orifices arranged in a plurality of rows to hold numerous screws. To modify the device of Happonen et al. employing the orifices in a plurality of rows would have been obvious in order to provide more orifices for more screws, as suggested by Sundstrom. Official notice is taken that bone screws of different sizes would naturally suggest bone screws of different shapes, as there is no indication that all bone screws

known as of the Happonen et al. reduction to practice were all of a uniform shape. The cited prior art would appear to support this assertion.

As to claims 2, 5, 17 and 20, Happonen et al. disclose each orifice dimensioned to guide the removal instrument into the orifice.

As to claims 6 and 7, Happonen et al. disclose pocket holes with contained screws lying on the bottom of the pocket holes (the pocket holes extending as far as the engagement of the bottom of the screw head with the orifice).

As to claims 12-15 (all dependencies), 18 and 20, Happonen et al. disclose the delimitation walls of the orifices reduced in diameter below the surface, the reduction in diameter being gradually decreasing continuously or in steps, the reduction in inner diameter acting as a stop for the heads of a contained screw.

5. Applicant's arguments with respect to claims 1-2, 4-7, 10, 12-15 and 17-20 have been considered but are moot in view of the new ground(s) of rejection. It is considered that in suggesting bone screws of different sizes, Happonen et al. did not intend all bone screws to be identical to his shown bone screw, as the prior art would appear to indicate that bone screws come in many shapes and sizes, the prior art to Happonen et al. would work for these additional bone screws other than his expressly shown one in a manner as claimed by applicant. See Class 606/subclasses 72-73 and 104 where bone screws per se come in various shapes and sizes. There is no indication in Happonen et al. that the "different sizes" recitation is limited to "different lengths".

6. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gambale discloses a surgical screw-holding device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Tuesday through Thursday from 7:30am to 5:00pm.

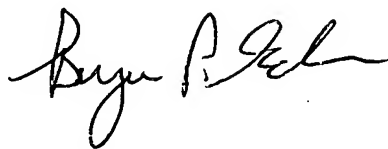
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read "Bryon P. Gehman". The signature is fluid and cursive, with the first name "Bryon" being more prominent than the last name "Gehman".

Bryon P. Gehman
Primary Examiner
Art Unit 3728

BPG

Approved
1-16-09

REPLACEMENT SHEET

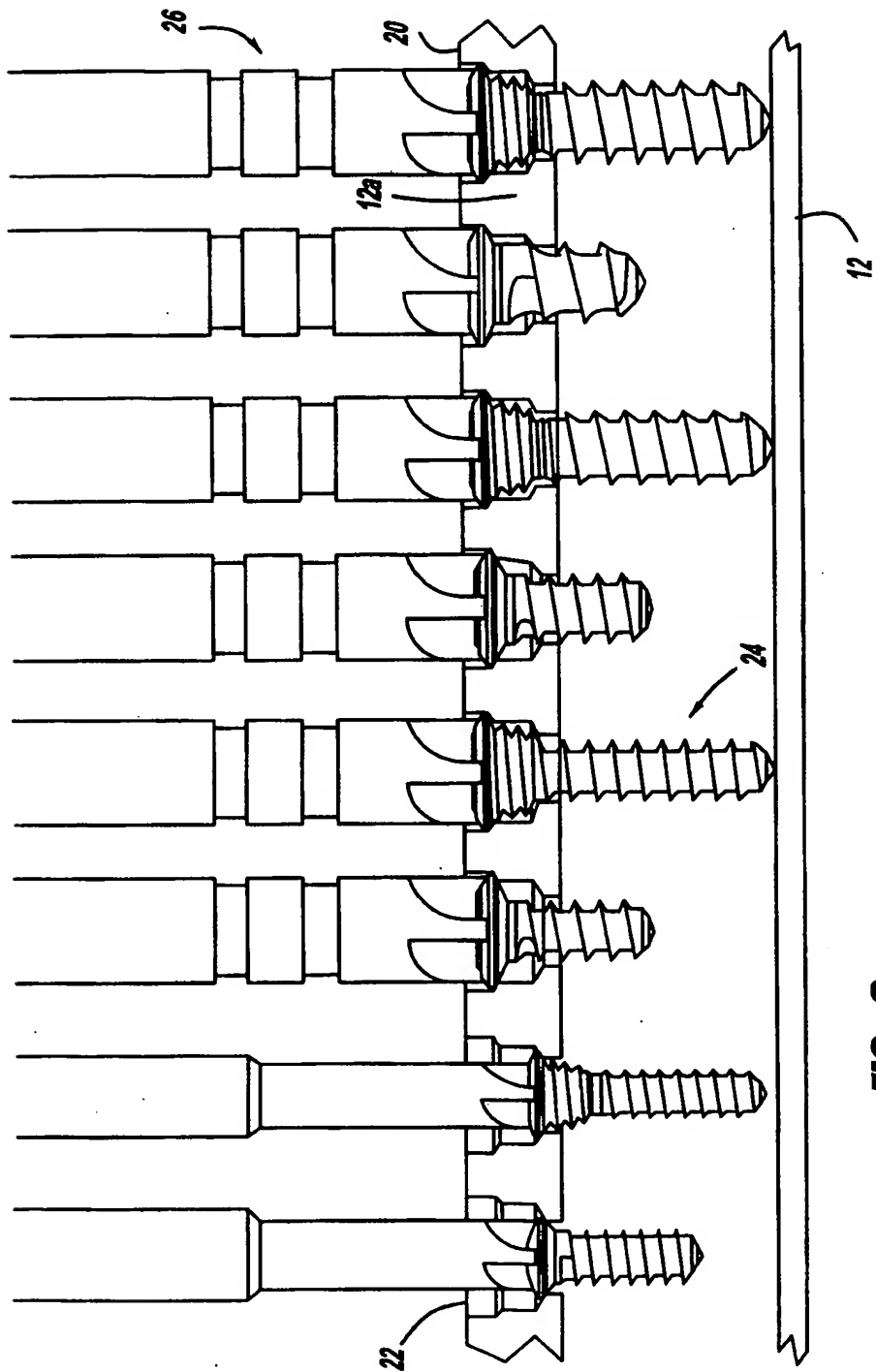


FIG - 3a